

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

JUL 15 1996

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In the Matter of

Amendment of the Commission's Regulatory
Policies to Allow Non-U.S.-Licensed Space
Stations to Provide Domestic and
International Satellite Service in
the United States

)
) IB Docket No. 96-111
)
) CC Docket No. 93-23
) RM-7931
)
) File No. ISP-92-007

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS OF CAPITAL CITIES/ABC, INC., CBS INC.,
NATIONAL BROADCASTING COMPANY, INC. AND
TURNER BROADCASTING SYSTEM, INC.

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July 15, 1996

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SUMMARY

In the DISCO II rulemaking proceeding, the Commission proposes to establish an effective competitive opportunities for satellites ("ECO-Sat") test under which non-U.S. satellite systems will be able to provide satellite services to, from, or within the United States only to the extent that foreign countries allow effective competitive opportunities for U.S. satellite systems to provide analogous services in their markets. As operators of major broadcast and cable television networks, Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc. and Turner Broadcasting System, Inc. (collectively, "the Networks") use the satellite facilities of both U.S. and non-U.S. satellite operators extensively, and, therefore, have a significant interest in the Commission's DISCO II proposals.

To fulfill their news and program distribution missions, the Networks require the ability to transmit programming materials from anywhere to anywhere on short notice at a reasonable cost. For their overseas video transmission requirements, the Networks today rely exclusively on satellite technology, primarily on fixed satellite services ("FSS") provided by non-U.S.-licensed operators such as INTELSAT. Underseas fiber optic cables are not yet considered a meaningful competitive alternative to satellites for such services because of concerns relating to technical performance, cost, connectivity and operational flexibility.

In light of the current lack of alternatives to satellites for overseas video transmissions, and because it is impossible to predict where and when the next newsworthy event will occur, the Networks urge the Commission not to apply the ECO-Sat test to fixed-satellite services used for the origination and distribution of international video programming materials, including especially international occasional use video transmission services. Due to their unique service requirements attributable to the need for immediacy in their newsgathering and other program operations, broadcasters and cablecasters (and their earth station vendors) should be allowed to use any non-U.S. satellite for the international transmission of video programming materials and associated communications.

In the event the Commission adopts an ECO-Sat test which it would apply to video service transmissions -- which it should not do -- the Networks urge the Commission at least to modify its test to reflect real-world, practical considerations. The Commission should grandfather U.S. end users' existing authorizations for services acquired from non-U.S. satellites, regardless of whether any changes in the ownership of the non-U.S. satellite occur in the future or whether the provision of existing

services is transferred to a replacement satellite. Otherwise, end users' long-term operational planning will be disrupted.

Additionally, at least for international video service transmissions, the Commission should apply the ECO-Sat test based only on practical, not on theoretical, "effective competitive opportunities." For example, the Commission should not apply the ECO-Sat test to a non-U.S. satellite that a broadcaster wishes to access for an international video transmission if there are no alternative sources of satellite capacity with the requisite power, bandwidth and coverage (footprint) to provide the required service. In other words, if there is no U.S. satellite capacity available to provide the requested service, there is no need to apply the ECO-Sat "competitive parity" test.

Moreover, with respect to international video transmission services, the Commission should not attempt to prohibit the re-origination of traffic that at one time is carried over non-U.S. satellites that have not been subject to ECO-Sat determinations. Today the Networks frequently use "double hop" satellite transmissions strictly for operational reasons. Because some of the non-U.S. satellites used in such transmissions do not have footprints that reach the U.S., there is no reason why these satellites ever should be required to be subject to an ECO-Sat determination before they can be a part of a "re-originated" transmission.

If the Commission were to adopt its proposed DISCO II policy, it should enforce the ECO-Sat test through means other than the application process for U.S. earth station licenses. Obtaining ECO-Sat authorizations on an earth station-by-earth station basis as the Commission proposes simply is not workable for broadcast and cable organizations facing programming deadlines. Broadcasters and cablecasters should be allowed to choose the earth station that will access a non-U.S. satellite based on operational considerations rather than on whether a particular earth station has been granted an ECO-Sat authorization for the satellite at issue. Moreover, a broadcaster seeking to cover a fast-breaking international news story or other special event does not want to be placed in the middle of what could be a highly contentious "competitive parity" proceeding. The Commission should allow the non-U.S. satellite operator or any third party to seek a declaratory ruling that the operator satisfies the ECO-Sat test for specific route markets. Once the Commission declares that a non-U.S. satellite satisfies the ECO-Sat test for named route markets, the Commission should allow all U.S.-authorized earth station licensees to access the non-U.S. satellite immediately for the specified route markets, thereby sparing the Commission from acting upon dozens of identical applications for ECO-Sat authorizations.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States

IB Docket No.96-111

and

Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations

CC Docket No. 93-23
RM-7931

and

COMMUNICATIONS SATELLITE CORPORATION
Request for Waiver of Section 25.131(j)(1)
of the Commission's Rules As It Applies to
Services Provided via the Intelsat K
Satellite

File No. ISP-92-007

Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc. and Turner Broadcasting System, Inc. (collectively, "the Networks"), by their attorneys, hereby file these initial comments in response to the Notice of Proposed Rulemaking ("Notice") issued in the above-captioned proceeding, also known as "DISCO II" (Domestic and International Satellite Consolidation Order). In this proceeding, the Commission solicits comments on

its proposed uniform framework for evaluating applications by users in the United States for authority to access non-U.S.-licensed satellite systems.^{1/}

Specifically, the Commission proposes to establish an effective competitive opportunities for satellites ("ECO-Sat") test under which non-U.S. satellite systems generally will be able to provide satellite services to, from, or within the United States to the extent that foreign countries allow effective competitive opportunities for U.S. satellite systems to provide analogous services in their markets. Although the Networks do not take a position in these joint comments on whether the ECO-Sat test appropriately should be applied to Direct Broadcast Satellite ("DBS") services or mobile satellite services ("MSS"), the Networks have concerns about the application of the ECO-Sat test to those fixed satellite services ("FSS") used for the origination and distribution of international video programming materials, including especially international occasional use video transmission services (and for the coordination and control communications associated with video transmission services). If the Commission decides in general to adopt an ECO-Sat approach, the

^{1/} The Notice defines a "non-U.S. satellite system" as one that does not hold a commercial space station license issued by the Commission. INTELSAT and INMARSAT satellites, Mexican Morelos and Solidaridad satellites, Canadian Anik satellites, Russian Intersputnik and Statsionar satellites, HISPASAT and EUTELSAT satellites are examples of non-U.S. satellite systems. U.S. satellite systems, in contrast, are those licensed by the Commission.

Networks believe it is important that the unique concerns of broadcasters and cablecasters relating to international video transmission services be taken into account. This is particularly so in light of the need for immediacy that prevails for newsgathering and other program transmission operations.

I. BACKGROUND: THE PROPOSED ECO-SAT TEST

In the DISCO II Notice, the Commission proposes to expand on policies and rules which it recently adopted in two separate decisions: 1) the DISCO I decision in which the Commission eliminated the regulatory distinction between the provision of international and domestic services on U.S.-licensed satellites,^{2/} and 2) the Foreign Carrier Entry decision in which the Commission established an effective competitive opportunities test to determine whether foreign-owned carriers should be allowed to participate in U.S. international and domestic communications markets.^{3/}

In general, the Commission tentatively concludes that, although U.S. users will benefit from greater access to non-U.S. satellites, unrestricted access to the U.S. market by non-U.S. systems may adversely affect competition in the U.S. Notice at para. 11. The proposed ECO-Sat test, therefore, is intended to

^{2/} Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd 2429 (1996) ("DISCO I").

^{3/} Market Entry and Regulation of Foreign-Affiliated Entities, 11 FCC Rcd 3873 (1995) ("Foreign Carrier Entry").

allow non-U.S. satellite systems to serve the United States only under terms of competitive parity with U.S.-licensed systems. Id. at para. 12. The Commission tentatively concludes that any country intending to reap the benefits from the provision of services by its licensed satellites to, from, or within the United States should grant similar competitive opportunities to U.S.-licensed satellites both in its "home market" and in the applicable "route markets" that the non-U.S. satellite proposes to serve from U.S. earth stations.^{4/}

Under the proposed ECO-Sat test, the Commission would examine both de jure constraints that by national law may bar access by U.S. satellite systems to foreign markets and de facto constraints that otherwise limit or prevent such access. Notice at paras. 37-41. The Commission proposes to enforce the ECO-Sat test through the earth station licensing process. Under the Commission's proposal, any earth station user or operator in the U.S. that wishes to send or receive transmissions over a non-U.S. satellite must apply individually on an earth station-by-earth station basis for authorization to communicate with the non-U.S. satellite. Id. at para. 15.^{5/}

^{4/} Notice at paras. 26-27. "Route markets" are those markets other than the home market in which a satellite transmission originates or terminates.

^{5/} As the Commission states, "[e]arth station applications would then become the procedural vehicle by which we prevent competitive distortions in the U.S. market and ensure responsible spectrum management." Notice at para. 15.

II. AS MAJOR USERS OF NON-U.S.-LICENSED SATELLITES, THE NETWORKS HAVE A SIGNIFICANT INTEREST IN THIS PROCEEDING

As operators of major broadcast and cable television networks, the Networks have a significant interest in the Commission's proposals to modify the policies authorizing U.S. users to access non-U.S.-licensed satellites. The Networks use satellite communications extensively in the operation of their television and radio networks for functions including program distribution to their affiliated broadcast stations and cable system customers, backhaul of transmissions from remote locations to their network operations centers, satellite news gathering, and associated voice and data coordination and control circuits.^{6/}

For their international video transmission requirements, the Networks rely heavily on satellite services provided by non-U.S.-licensed operators. For example, they use INTELSAT satellite facilities extensively, accessing the INTELSAT system through its signatories, including the U.S. Signatory, COMSAT, here in the United States. The Networks also acquire international space segment facilities from non-U.S. licensed satellite systems such as Morelos, Anik, Statsionar and HISPASAT, as well as from U.S.-licensed operators such as PanAmSat, Hughes and Columbia Communications Corporation. Examples of the types of international programming brought to the U.S. via satellite include on-the-spot coverage of news events in the Middle East and Bosnia, and sporting

^{6/} Each Network does not necessarily engage in each one of these operations or functions.

events such as the British Open golf tournament, the Wimbledon and French Open tennis tournaments, and the Winter and Summer Olympics.

The Networks acquire international satellite video circuits on a full-period, part-time contract, and occasional service basis. Full period circuits, available 24 hours per day, even days per week, often are leased on a multi-year term for the densest traffic routes, such as London to the U.S. Full-period service also can be acquired in smaller time increments, ranging from a week to several months to cover either planned multi-day events such as a G-7 economic summit or events such as Desert Shield and Desert Storm whose commencement and duration cannot be predicted.^{1/} Part-time contract and occasional use services can be acquired for as few as ten minutes per day.

Occasional service is the most flexible international satellite service available and is used extensively for coverage of fast-breaking news events, often in remote locations. Occasional services typically can be ordered on short notice, in small time increments and with different origination and termination points from one day to the next. Occasional service plays a very important role in program origination, with an increasing number of backhauls taking place in today's burgeoning international news and

^{1/} Full-period service acquired in these smaller time increments frequently takes on many of the characteristics of occasional service described below in terms of the short notice for ordering and the lack of knowledge concerning origination and termination points. For this reason, for the purposes of the issues discussed in these comments, this type of full-period service should be considered the equivalent of occasional service.

sports environment. Absent the availability of reasonably-priced and ubiquitous international occasional use services, the Networks' costs for broadcast operations increase substantially; and the Networks' operational flexibility, which occasional service facilitates, is affected adversely.

III. THE NETWORKS HAVE BEEN STRONG SUPPORTERS OF FCC EFFORTS TO PROMOTE COMPETITION IN THE SATELLITE SERVICE MARKETPLACE AND TO ELIMINATE SERVICE RESTRICTIONS

Historically, the Networks have been strong supporters of Commission efforts to open the U.S. domestic and international satellite marketplaces to increased competition, to expand the availability of end user options, and to eliminate unnecessary restrictions on the provision and use of telecommunications services. For example, in the FCC's Spanish International Network proceeding, the Networks supported the proposal to permit broadcasters to secure INTELSAT television transmission services directly from COMSAT rather than through U.S. international record carrier (IRC) intermediaries.^{8/} By adopting this proposal allowing broadcasters to be the first end users to access COMSAT directly, the Commission provided broadcasters with increased operational flexibility.

The Networks also recommended the adoption of the FCC's proposal to allow individual carriers to operate international

^{8/} See Spanish International Network, 70 F.C.C. 2d 2127 (1978), aff'd sub nom. ITT World Communications v. FCC, 725 F.2d 732 (D.C. Cir. 1984).

earth stations communicating with the INTELSAT system independent of COMSAT ownership and control.^{9/} The Networks endorsed the Commission's proposal to allow the provision of international earth station services on a competitive, rather than on a cartel, basis and to require COMSAT to file cost-based tariffs for earth segment service separate from cost-based tariffs for space segment service in order to promote the creation of a competitive market for the earth station segment of an end-to-end service.

The Networks also supported proposals before the Executive Branch and the FCC to authorize entities separate from INTELSAT to provide international satellite services on a competitive basis.^{10/} And, the Networks participated in the Commission's decision on reconsideration to allow separate satellite system operators to offer occasional use as well as full-period television services in order to introduce potential competition into the international occasional television service marketplace. Subsequently, the Networks urged the FCC and the Executive Branch to adopt PanAmSat's proposal to eliminate the operating restrictions prohibiting separate system operators from

^{9/} Modification of Policy on Ownership and Operation of U.S. Earth Stations That Operate With the INTELSAT Global Communication System, 100 F.C.C. 2d 250 (1984) ("Unbundling Order").

^{10/} See Establishment of Satellite Systems Providing International Communications, 101 F.C.C. 2d 1046 (1985), on recon. 61 Rad. Reg. 2d (P&F) 649 (1986), on further recon. 1 FCC Rcd 439 (1986).

providing services interconnected to the public switched networks.^{11/}

The Networks also endorsed requests seeking a declaratory ruling that the Commission has authority to license certain types of international earth stations communicating with the INTELSAT system to entities other than U.S. common carriers. First, in the Reuters proceeding, the Networks supported a flexible interpretation of Section 201(c)(7) of the Communications Satellite Act of 1962, 47 U.S.C. § 721(c)(7), so that the statute would not be construed as limiting the FCC's general Title III authority to grant an international earth station license for INTELSAT service to a foreign-owned non-common carrier applicant for use in the applicant's private business.^{12/} Second, in the Brightstar proceeding, the Networks supported the extension of the Reuters decision to permit the licensing of international earth stations communicating via the INTELSAT system to a foreign-owned corporate entity for the provision of international television transmission

^{11/} See Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from INTELSAT, 7 FCC Rcd 2313 (1992).

^{12/} See Licensing Under Title III Of The Communications Act Of 1934, As Amended, Of Private Transmit/Receive Earth Stations Operating With The INTELSAT Global Communications Satellite System, 3 FCC Rcd 1585 (1988), aff'd sub nom. TRT Telecommunications Corp. v. FCC, 876 F.2d 134 (D.C. Cir. 1989).

services to third parties on a non-common carrier basis.^{13/} These rulings had the effect of allowing non-U.S. entities to compete in the marketplace for U.S. earth segment services associated with INTELSAT international space segment consistent with the foreign ownership restrictions contained in Section 310 of the Communications Act.^{14/}

More recently, the Networks filed comments in the DISCO I proceeding in which they supported the proposal to eliminate the restrictions on U.S. domestic satellites providing international

^{13/} Licensing Under Title III of the Communications Act of 1934, as amended, of Non-Common Carrier Transmit/Receive Earth Station Operating with the INTELSAT Global Communications Satellite System ("Brightstar"), 8 FCC Rcd 1387 (1993).

^{14/} The Networks supported foreign-owned Brightstar's argument that its earth station services would be provided on a private carrier -- rather than common carrier or broadcast -- basis because, otherwise, Brightstar's ability to obtain an earth station license from the FCC would have been problematical in light of the 25 percent ownership benchmark contained in Section 310(b)(4). It is important for the Commission to have in mind, however, that Section 310(a) bars the issuance of any type of license to "any foreign government or the representative thereof." Many broadcast organizations around the world have pointed to Section 310(a) as a bar to access to the U.S. satellite services market, particularly if they may wish to license an earth station in the U.S. When the U.S. networks seek to operate transportable Satellite Newsgathering (SNG) earth stations abroad, at times they have been denied access on reciprocity grounds because the foreign administration has cited our own Section 310 restrictions. Although the situation is changing as some countries move to privatize their state-run broadcast organizations, the prohibitive impact of Section 310(a) on access to the U.S. market by foreign broadcast organizations continues to be significant. Thus, the Commission should have in mind the potential difficulties created by Section 310 as it presently exists in terms of a limitation to access to the U.S. market, especially as Section 310 impacts the way in which foreign broadcast organizations view reciprocal opportunities in the U.S. with regard to video transmission services.

service and on U.S. international satellites providing domestic service.^{15/} The Networks also supported the proposal to allow U.S. earth station licensees with "ALSAT" authorizations to access all U.S.-licensed satellites without filing additional applications.

In sum, the Networks consistently have supported proposals to introduce more competition into the satellite marketplace from both U.S.- and foreign-owned providers as well as proposals to eliminate unnecessary restrictions on the provision and use of telecommunications services in general and of video transmission services (and associated coordination and control circuits) in particular. The Networks generally have opposed the establishment of regulatory requirements which would limit the transmission alternatives available to broadcasters or which would add cumbersome regulatory procedures that cause unnecessary delay and hamper broadcasters' operational planning.

IV. IN LIGHT OF BROADCASTERS' CURRENT LACK OF ALTERNATIVES TO SATELLITE CAPACITY FOR OVERSEAS VIDEO TRANSMISSIONS AND THE IMMEDIACY OF PROGRAM TRANSMISSION REQUIREMENTS, THE COMMISSION SHOULD NOT APPLY ITS PROPOSED ECO-SAT TEST TO NON-U.S. SATELLITES USED FOR THE ORIGINATION AND DISTRIBUTION OF VIDEO PROGRAMMING MATERIALS, ESPECIALLY OCCASIONAL USE VIDEO TRANSMISSION SERVICES

To fulfill their newsgathering and programming missions, the Networks require the ability to transmit video and associated

^{15/} Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd 2429 (1996).

audio programming from anywhere to anywhere on short notice at a reasonable cost. For their overseas video and associated audio transmission requirements, the Networks today rely exclusively on satellite technology. Although underseas fiber optic cables now are being equipped with the necessary bandwidth to provide broadcast-quality video transmission services, they do not yet constitute a meaningful competitive alternative to satellites for transoceanic video transmission service.

The Networks have not utilized underseas fiber optic cables for video transmission on anything other than an experimental basis due to their concerns for transoceanic cables' technical performance, cost, connectivity, and operational flexibility. For example, one of the least expensive transoceanic fiber optic video service offerings being marketed today costs 50 percent more than a comparable satellite transmission. Moreover, satellites possess an operational advantage over point-to-point underseas cables for video transmission service due to the flexibility inherent in satellite technology for multi-point newsgathering and/or program distribution. Indeed, the point-to-point connectivity of transoceanic fiber optic cable is considered very restrictive in a competitive news environment where important news events may occur anywhere throughout the world and underseas fiber optic capacity may not be available near the location of the news event.

It has been broadcasters' experience that any significant limitation on their use of available satellite capacity has hindered their ability to provide television coverage of overseas events. In light of the current lack of alternatives for overseas video transmissions, therefore, the Commission should not apply the ECO-Sat test to broadcasters' use of non-U.S.-licensed satellites for the purpose of transmitting international video and associated audio programming materials. Regardless whether it would be appropriate to apply the ECO-Sat test to prohibit U.S. earth stations from accessing non-U.S. satellites for other types of communications services (for which there are available competitive transmission media), it would not be appropriate to apply the ECO-Sat test to prohibit the use of a non-U.S. satellite for international video transmissions because that satellite might constitute the only suitable transmission capacity available, or at least the only one reasonably available.

The harm to broadcasters of applying the ECO-Sat test to overseas video transmission is illustrated most clearly in the context of occasional service used for coverage of fast-breaking news events. Because it is impossible to predict where and when the next newsworthy international event will occur, as a practical matter broadcast and cable organizations cannot provide television coverage of fast-breaking news and other special events on a timely basis if they first are required to compile the legal and other information necessary to satisfy the ECO-Sat test for a particular

non-U.S. satellite and wait for the Commission's approval of its application. In order to fulfill their missions, U.S. broadcasters and cablecasters require the operational flexibility to access whichever satellite has sufficient capacity at a reasonable cost to allow them to transmit their programming materials, regardless whether each of the satellite's "route markets" potentially is subject to competition from U.S.-licensed satellites. Due to their unique service requirements, broadcasters and cablecasters (and their earth station vendors) should be allowed to use any non-U.S. satellite, at least for the international transmission of video programming materials and associated coordination and control communications.

Providing U.S. broadcasters and cablecasters authority to access non-U.S. satellites for the transmission of video programming would be fully consistent with past FCC decisions recognizing the unique service requirements of broadcast and cable organizations. As mentioned previously, broadcasters were the first non-carrier entities authorized by the Commission to obtain satellite transmission services directly from COMSAT rather than through intermediary international record carriers.^{16/} Additionally, while other users of separate international satellite systems initially were required to obtain fixed amounts of service pursuant to long-term contracts, the U.S. Executive Branch agencies and the FCC interpreted the "long-term" requirement to permit

^{16/} Spanish International Network, 70 F.C.C. 2d 2127 (1978).

broadcasters to enter into requirements contracts for a minimum period of one year for the provision of occasional use television services.^{17/} Similarly, when the Commission in 1992 was considering at its Sunshine meeting PanAmSat's request to eliminate the restrictions prohibiting separate systems from providing services interconnected to the public switched network ("PSN"), the FCC staff described broadcaster coordination and control circuits as the type of private line circuits whose interconnection to the PSN would serve the public interest; and the Commission adopted the Executive Branch proposals.^{18/}

Because of the acknowledged unique nature of broadcast coverage of fast-breaking news and other special events, even if it adopts the ECO-Sat test for other types of services, the Commission should not apply the ECO-Sat test to non-U.S. satellite services used for international video transmissions. The Commission should allow broadcast and cable organizations to use any non-U.S. satellite to transmit their international video programming materials, especially for occasional use video transmissions.

^{17/} A requirements contract provides for a fixed term relationship but no fixed product amount. See Separate Systems, 61 Rad. Reg. 2d (P&F) 649 at note 16.

^{18/} Permissible Services of U.S. Licensed International Communications Satellite Systems Separate From the International Telecommunications Satellite Organization (INTELSAT), 7 FCC Rcd 2313 (1992).

V. IN THE EVENT THE COMMISSION ADOPTS AN ECO-SAT TEST WHICH IT APPLIES TO VIDEO SERVICE TRANSMISSIONS -- WHICH IT SHOULD NOT DO -- THE COMMISSION AT LEAST SHOULD MODIFY ITS TEST TO REFLECT REAL-WORLD, PRACTICAL CONSIDERATIONS

As discussed in the preceding section, regardless of whether the Commission adopts an ECO-Sat test for other types of services, the Commission should not apply the ECO-Sat test to international video transmissions of broadcasters and cablecasters, especially occasional use video transmissions which are used for the television coverage of fast-breaking news and other special event programming. If, however, the Commission nevertheless decides to apply the ECO-Sat test in some fashion to international video service transmissions on non-U.S. satellites, the Commission at least should modify the proposed application of the test to take into account the needs of U.S. broadcasters and cablecasters.

At least for international video service transmissions, the Commission should apply the ECO-Sat test based only on practical "effective competitive opportunities," not on theoretical "effective competitive opportunities." In other words, the Commission should forbear from applying the ECO-Sat test where there are no alternative sources of satellite capacity with the requisite power, bandwidth and coverage (footprint) to provide the international video transmissions service at issue. For example, if Country "X" with its own satellite system has on its books a law prohibiting U.S. satellite carrier entry into its international market but no U.S.-licensed satellite has a footprint that reaches

Country "X", U.S. broadcasters should not be precluded from using the Country "X" satellite for international transmissions between the U.S. and Country "X" because no U.S. satellite is technically capable of providing comparable service. U.S. broadcasters also should be able to access the Country "X" satellite even if a U.S. satellite does have a footprint that reaches Country "X" in the event that the U.S. satellite has no comparable available capacity to provide the service needed by the U.S. broadcasters.

Similarly, at least for international video transmission services, the Commission should apply the ECO-Sat test only to the specific U.S. international route market proposed to be served via the non-U.S. satellite. Contrary to the suggestion in the Notice at para. 11, other route markets potentially served by the non-U.S. satellite should not be considered.^{19/} Broadcasters should not be prohibited from accessing a non-U.S. satellite from a specific foreign country (for example, to cover a news or other special event occurring there) simply because the non-U.S. satellite has a theoretical competitive advantage over U.S.-licensed satellites for service from a different foreign country which is not the subject of the U.S. broadcaster's application.

The Commission also should modify its tentative conclusion that, while it does not intend to revisit existing earth

^{19/} The Commission tentatively concluded that it can distort competition in the market for international satellite services, if the non-U.S. satellite subject to the ECO-Sat test can provide service on any international routes that cannot be served by U.S. satellites. Notice at para. 11.

station authorizations to access non-U.S. satellites such as INTELSAT satellites, it does not propose to transfer the authorizations automatically to the successor operators of the non-U.S. satellites. Notice at para. 74. Failure to transfer existing authorizations automatically to the successor operators of non-U.S. satellites will create unnecessary operational and commercial difficulties for U.S. end users. If the Commission prohibits further use of a non-U.S. satellite which now is being used by U.S. broadcasters, the broadcasters' long-term operational planning will be disrupted significantly. The Commission, at the least, should grandfather U.S. end users' existing authorizations for services acquired from non-U.S. satellites (including occasional services), regardless of whether any changes occur in the ownership of the non-U.S. satellite or whether the provision of such services is transferred to a replacement satellite.

Finally, at least with respect to international video transmission services, the Commission should not attempt to enforce its proposed DISCO II policy by prohibiting the re-origination of traffic that at one time is carried over non-U.S. satellites that do not satisfy the ECO-Sat test. See Notice at para. 28. Today the Networks frequently use "double hop" satellite transmissions strictly for operational reasons, and a ban on re-originated traffic would disrupt severely the Networks' efforts to bring to the American public international programming materials from around the world. For example, where the footprint of a non-U.S.

satellite used for the origination of a program transmission does not reach the U.S., the signal must be downlinked to an intermediary earth station accessible to a satellite that "looks" at the U.S. Because some of the non-U.S. satellites utilized in these "double hop" transmissions do not have footprints that reach the U.S., there is no reason why these satellites ever should be required to be subject to an ECO-Sat determination before they can be a part of a "re-originated" transmission.

VI. THE COMMISSION SHOULD ENFORCE THE ECO-SAT TEST THROUGH MEANS OTHER THAN U.S. END USERS' APPLICATIONS FOR EARTH STATION LICENSES

The Commission proposes to require any U.S. earth station licensee that wishes to access a non-U.S. satellite to apply individually on an earth station-by-earth station basis for FCC authorization to communicate with the non-U.S. satellite. Notice at para. 15. The Commission proposes to modify the earth station application form to require the submission of an exhibit containing information on any non-U.S. satellite to be accessed from the earth station. The requested information would include the ownership structure of the non-U.S. satellite, a list of all countries in which signals transmitted via the earth station will originate or terminate, a showing that there are no de jure entry barriers in the relevant home and route markets of the non-U.S. satellites, and information ensuring that the non-U.S. satellite meets all Commission technical, financial and legal requirements for the proposed service. Notice at paras. 60-61.

The Commission should reconsider its proposal to implement the ECO-Sat test through U.S. end users' applications for earth station licenses. Applying the ECO-Sat test on an earth station-by-earth station basis simply is not workable for video programming transmission authorizations, especially those needed to cover fast-breaking news stories. As discussed previously, broadcast and cable organizations facing programming deadlines do not have the time to compile and submit the voluminous legal and technical information required under the ECO-Sat test before their scheduled transmissions are allowed to commence.

The Commission's proposed earth station-by-earth station authorization approach is particularly cumbersome for broadcasters which utilize a number of different earth stations and which need to access a variety of satellites for the transmission and reception of video programming materials. Licensees of multiple earth stations at various locations should be allowed to choose the earth station that will access a satellite based on operational considerations rather than on whether a particular earth station is one of those which formally has been authorized to access a particular non-U.S. satellite.

A U.S. broadcaster applying for a DISCO II earth station authorization to access a particular non-U.S. satellite also does not want to be placed in the middle of a proceeding addressing "competitive parity" issues in which the U.S. broadcaster applicant has neither expertise nor authority to make decisions on behalf of

the non-U.S. satellite operator whose operations are at issue. If such a proceeding initiated by a broadcaster/earth station licensee instigates a highly-charged controversy among the non-U.S. satellite operator, its U.S. competitors and the Commission, it is possible that any bad feelings engendered could jeopardize the U.S. broadcaster's operations in the satellite operator's home country. Moreover, in light of the fact that an earth station authorization applicant must certify to the accuracy and completeness of its application, a broadcaster does not want to be required to certify to the accuracy of an exhibit on the non-U.S. satellite's ownership structure and on the national laws of a foreign country that can be based only on information obtained from the non-U.S. satellite operator.

To the extent, therefore, the Commission decides to apply an ECO-Sat test to broadcasters' use of non-U.S. satellites for the transmission of video programming materials -- which, as explained previously, it should not do -- the Commission should adopt some form of alternative procedural vehicle for the enforcement of its policy. For example, the Commission could allow the non-U.S. satellite operator itself to seek a declaratory ruling that the operator satisfies the ECO-Sat test for specific route markets. Alternatively, a customer, earth station licensee, or any third party could file such a request on behalf of the non-U.S. satellite operator.